IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 621 OF 2006
IN
MISC. PETITION NO. 12 OF 1990
IN
TESTAMENTARY PETITION NO. 402 OF 1987

Muktaben Kantilal Maniar] .. Appellant (Ori.Petitioner)

Versus

Vijay Anant Gangan] .. Respondent (Ori.Respondent)

Mr. U.J. Makhija i/b Ms. Shilpa Gajare for appellant.

Mr. P.P. Gyani with Mr. N.R. Gandhi for respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 19TH SEPTEMBER, 2006

P.C. :

. We heard Mr. U.J. Makhija, the counsel for the appellant and perused the impugned order. The testator is Chunibhai U. Padia. He executed the Will on 1st July, 1985 bequeathing his property to Public Charitable Trust. In the Petition seeking probate of the said Will, admittedly the name of surviving sister of the deceased testator was disclosed and the probate was granted. Thereafter, the Petition for revocation of the probate was made by the appellant claiming to be the legal heir of the deceased. It is alleged that the

deceased was survived by sisters and brothers but their names were not disclosed in the Petition for probate.

2. It is not in dispute that at the time of the death of Chunibhai, he had not left any heir in Class I of the Schedule appended to Section 8 of the Hindu Succession Act, 1956. He was survived by Class II heirs. Upon perusal of Class II heirs in the Schedule we find that sister falls second in entry of Class II. There are no other heir in entry No.II. The petitioner, even if assumed to be heir of the deceased Chunibhai, is covered by the entry below second entry. Section 9 provides that among the heirs specified in the Schedule those in Class I shall take simultaneously and to the exclusion of all others; those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession. Hemjuwarben the sister of Chunibhai thus was only required to be mentioned in the Petition for probate. Non-mention of the petitioner in the probate Petition, therefore, does not furnish a ground for revocation of the probate.

3. The impugned order does not call for any interference.

4. Appeal is dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]